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*Attorneys for Defendant Facebook, Inc. and
Non-Prioritized Defendants Mark Zuckerberg
and Sheryl Sandberg*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**NOTICE OF MOTION AND MOTION BY
DEFENDANT FACEBOOK, INC. TO
DISMISS PLAINTIFFS' CONSOLIDATED
COMPLAINT**

Judge: Hon. Vince Chhabria
Courtroom 4, 17th Floor
Hearing Date: January 23, 2019
Hearing Time: 10:30 a.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on January 23, 2019, at 10:30 a.m., before the Honorable Vince Chhabria of the United States District Court for the Northern District of California in the San Francisco Courthouse, Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Defendant Facebook, Inc. will and does move this Court for an order dismissing Plaintiffs' Corrected Consolidated Complaint. This motion is brought on the grounds that: Plaintiffs lack standing to assert any of their claims (*see, e.g., Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016)); Plaintiffs consented to the conduct alleged (*see, e.g., Cal. Civ. Code* § 3515; *Smith v. Facebook, Inc.*, 262 F. Supp. 3d 943, 953 (N.D. Cal. 2017); *In re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016, 1028–32 (N.D. Cal. 2014)); the statute of limitations bars certain of Plaintiffs' claims (*see, e.g., Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935, 940 (9th Cir. 2009); *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 806 (2005)); Plaintiffs failed to state a claim (*see, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); the parties' choice-of-law provision requires dismissal of Plaintiffs' non-California claims (*see, e.g., Nedlloyd Lines B.V. v. Superior Court*, 3 Cal. 4th 459, 464–65 (1992) (en banc)). Per the Plaintiffs' "Prioritization Motion," Facebook's Memorandum will focus on Claims 1-12, which Co-Lead Counsel identified as "priority claims." Facebook reserves its right to assert additional arguments in support of dismissing the "non-priority claims" at the appropriate time, as determined by the Court. Of course, rulings on Facebook's motion to dismiss the priority claims may inform the viability of Plaintiffs' non-priority claims.

Facebook's motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Law, the concurrently filed Declarations of Joshua Lipshutz and Michael Duffey, the concurrently filed Request for Judicial Notice, any other matters of which the Court may take judicial notice, other documents on file in this action, and any oral argument of counsel.

DATE: November 2, 2018

Respectfully submitted,

GIBSON, DUNN & CRUTCHER, LLP

By: /s/ Orin Snyder
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